



STATE OF WASHINGTON
DEPARTMENT OF INFORMATION SERVICES
Olympia, Washington 98504-2445

DIS Memorandum

To: Prospective OSS Vendors
From: John Flanagan, RFP Coordinator
Date: 1/8/2003
Re: Nondisclosure Agreement

Dear Vendors:

Please find attached the nondisclosure (the "NDA") for the Operations Support System (the "OSS") Request for Proposals (the "RFP").

Execution of this document is required in order to receive portions of the RFP that have been designated as confidential information. Due to the high degree of Vendor interest in this acquisition, DIS will not individually negotiate the terms of this NDA with interested vendors.

Execution of the NDA is not mandatory for response to the RFP, nor is receipt of the confidential information mandatory. However; Vendors that elect not to execute the NDA will be responding to an incomplete RFP and will not receive DIS' answers to Vendors' questions posed during the RFP process.

Please print the document, fill in any blanks, sign the NDA and return it to my attention:

If by U.S. Mail at P.O. Box 42445, Olympia, WA 98504-2445
If by FedEx to 2411 Chandler Court SW, Olympia, WA 98502

Please do not hesitate to call me with any questions you may have at (360) 725-4236

Sincerely,
John Flanagan
RFP Coordinator

Nondisclosure Agreement

This Nondisclosure Agreement (the "Agreement") is made between the State of Washington, acting through the Department of Information Services, an agency of Washington State government ("DIS"), and _____ ("Recipient").

Recipient acknowledges that DIS has certain confidential or sensitive information and/or material. Recipient requires access to this information or material for purposes specified herein. DIS agrees to release this information to Recipient for those purposes pursuant to the terms and conditions contained in this Agreement. Recipient agrees to the terms and conditions herein.

NOW THEREFORE, in consideration of the above premises and promises contained herein, the parties agree as follows:

1. Whenever used in this Agreement, the term "Confidential Information" will mean (i) information exempt from disclosure to the public or other unauthorized persons under either RCW 42.17 RCW or other state or federal statutes; (ii) information related to DIS' Operations Support System Request for Proposals Process which is marked confidential or proprietary at the time of disclosure; or (iii) any other information which DIS has identified to Recipient in writing as confidential before or within thirty (30) days after disclosure; or (iv) information which would ordinarily be considered confidential or proprietary in the light of the circumstances surrounding disclosure. Confidential Information may take the form of (but is not limited to) plans, calculations, concepts, know-how, inventions, licensed technology, design sheets, design data, diagrams, system design, materials, hardware, manuals, drawings, processes, specifications, instructions, explanations, research, test procedures and results, equipment, identity and descriptions of components or materials used, or any other material or information supplied by or on behalf of DIS, or that is disclosed to or becomes known by Recipient as a result of its dealings with DIS. The information may be in tangible or intangible form. DIS' failure to expressly identify Confidential Information as such shall not in any way lessen or negate Recipient's obligation to keep such information confidential in accordance with this letter agreement.
2. Notwithstanding the foregoing, the term "Confidential Information" information, shall not be construed to include information that (i) is or becomes readily available in public records or documents, other than as a result of a disclosure by Recipient or other entity acting on behalf of Recipient, or (ii) which can be shown to have been known by Recipient prior to its disclosure by DIS, or (iii) which must be disclosed pursuant to applicable law, judicial action or government regulations, including without limitation the Washington State Public Records Act, RCW 42.17, et seq.
3. The Recipient acknowledges that the Confidential Information is confidential and proprietary information of DIS and that its protection is essential to the security and mission of DIS. The purpose of this agreement is to enable DIS to make disclosure of

the Confidential Information to the Recipient while still maintaining all rights in the Confidential Information and all control over the Confidential Information. The purpose is also to preserve confidentiality of the Confidential Information and to prevent is unauthorized disclosure. It is understood that this agreement does not grant Recipient an express or implied license or an option on a license, or any other rights to or interests in the Confidential Information, or otherwise.

4. The Recipient shall, and cause its employees, officers, independent contractors, and subcontractors, and any other entities acting on its behalf (collectively "Affiliates") to:
 - (a) copy, reproduce or use Confidential Information only for the purpose described in paragraph 10 and not for any other purpose unless specifically authorized to do so in writing by DIS; and
 - (b) not permit any other person to use or disclose the Confidential Information for any purpose other than those expressly authorized by this Agreement; and
 - (c) disclose such Confidential Information only to those of its Affiliates who require knowledge of the same for the purpose described in paragraph 10; provided such Affiliates are obligated to maintain the confidentiality of the Confidential Information and otherwise comply with the terms of this Agreement; and
 - (d) Implement physical, electronic and managerial safeguards to prevent unauthorized access to or use of Confidential Information.
5. The actions or negligence of Recipient's Affiliates with respect to the Confidential Information shall be deemed to be the actions or negligence of Recipient.
6. Recipient will keep the Confidential Information confidential and under access and use restrictions sufficient to prevent copying, use or disclosure thereof which violates this Agreement. Such restrictions will be at least as stringent as those applied by the Recipient to its own most valuable confidential and proprietary information.
7. Recipient will not remove, obscure or alter any notice of patent, copyright, trade secret or other proprietary right from the Confidential Information without DIS' prior written authorization.
8. Confidential Information will remain the exclusive Property of DIS; whenever requested by DIS, Recipient will promptly return to DIS all Confidential Information and all copies thereof, including summaries, reports or notes based thereon, unless otherwise expressly authorized by DIS in writing. The obligations under this Agreement shall survive the termination of the discussions or business relationship between DIS and Recipient.
9. Recipient agrees that the breach of the terms of this agreement would cause irreparable damage to DIS. Therefore, Recipient agrees that if it should breach its obligations hereunder, Recipient will defend, indemnify, and hold DIS harmless from actual damages from losses that result from its breach. This includes attorneys' fees and costs of suit. Also, DIS has the right to seek an order to restrain Recipient from breaching this agreement. If DIS does seek such an order, Recipient agrees at this time to waive any claim or defense that DIS has an adequate remedy at law or in damages.

10. This Agreement sets forth the entire agreement of the parties with respect to the use and disclosure of the Confidential Information and may be modified only by a writing signed by both parties. This Agreement will be construed and enforced in all respects in accordance with the laws of the State of Washington. The parties consent to the exclusive jurisdiction of the Superior Court of the State of Washington and exclusive venue in Thurston County, Washington.
11. The obligations of the parties under this Agreement shall continue and survive the completion of the discussions contemplated by this Agreement and shall remain binding for a period of three (3) years from the date of the execution of this Agreement.

APPROVED

State of Washington
Department of Information Services

APPROVED

Signature

Signature

Print or Type Name

Print or Type Name

Title

Title

Date

Date